

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 135
5628900

BETWEEN SPM CONTRACTING LIMITED
Applicant

A N D A LABOUR INSPECTOR WITH
MINISTRY OF BUSINESS
INNOVATION AND
EMPLOYMENT
Respondent

Member of Authority: David Appleton

Representatives: Kartika Pillay, Advocate for Applicant
Laurie Norton, Labour Inspector, for Respondent

Investigation Meeting: Determined on the papers

Submissions Received: 2 August 2016, from the Applicant
15 August 2016, from the Respondent

Date of Determination: 19 August 2016

**COSTS DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

[1] On 7 June 2016 the applicant lodged with the Authority an objection to an Improvement Notice issued by the respondent on 24 April 2016.

[2] Section 223E of the Employment Relations Act 2000 (the Act) provides that an employer may lodge with the Authority an objection to an Improvement Notice within 28 days after the Improvement Notice had been issued to the employer.

[3] As it was unclear from the papers exactly when the Improvement Notice had been issued to the employer (24 April 2016 being a Sunday, and the following day being a public holiday), the Authority sought information from the respondent. In reply, Mr Norton, a Senior Labour Inspector, responded stating that the Improvement

Notice had been written on *Sunday 26 April 2016* [sic] (presumably he meant Sunday 24 April 2016) and had been served by way of courier on the registered office of the applicant company on 26 April 2016. Mr Norton also stated that he accepted that he had made errors in calculating the quantum of the minimum wage arrears, but that breaches of minimum wage and record keeping had occurred and that had not been disputed by the applicant.

[4] Mr Norton then stated that the applicant had made a review of its records and payments and had paid the wage arrears due. On that basis, Mr Norton formally withdrew the Improvement Notice.

[5] Having received this communication from Mr Norton, two things were evident; first, that the applicant's objection to the Improvement Notice lodged with the Authority had been lodged outside of the 28 days' time limit stipulated in s.223E of the Act. Second, in any event, the Improvement Notice having been withdrawn, there was no longer anything to object to.

[6] The applicant then wrote a letter to the Authority essentially complaining of the issuing of the Improvement Notice and seeking costs. The Authority issued a notice of direction on 26 July 2016, which made clear that the applicant could seek to recover its costs in the Authority provided that those costs were confined to the costs incurred by that party in taking part in the Authority's proceedings, and did not include the costs of complying with the Improvement Notice.

[7] The notice of direction invited the applicant company to provide a breakdown of any costs incurred in lodging its objection to the Improvement Notice in the Authority, giving Mr Norton time to reply.

[8] On 2 August 2016 the applicant company submitted a breakdown as directed, which stated the following:

Total hours spent collating all records from the period 1st May 2015 to 1st September 2015 as requested by the Labour Inspector - \$980

Freight -\$20

Consultation with Parkers Business Solutions plus GST -\$500

Lodgement fees - Employment Relations Authority -\$71.56

[9] It therefore appeared from the breakdown that the applicant company was seeking costs from the Labour Inspectorate of \$1,571.56.

[10] However, it was clear on the face of this breakdown, that \$980.00 of the costs claimed related directly to time spent in addressing the Improvement Notice. This is evident from the description which states that the collation of the records was *as requested by the Labour Inspector*. Therefore, it was not collated in order to lodge the statement of problem contained in the objection to the Improvement Notice. Therefore, I disallow this sum.

[11] Turning to the item marked “Freight”, I infer that the \$20.00 relates to costs incurred in addressing the Improvement Notice rather than the lodging of the objection to it. I therefore disallow this sum.

[12] With respect to the item described “consultation with Parkers Business Solutions”, I again infer that this sum of \$500.00 was incurred as a result of the applicant company gathering together information in order to address the Labour Inspector’s Improvement Notice. Again, therefore, I disallow this sum.

[13] This leaves only the lodgement fee of \$71.56. Whether it is appropriate to order the Labour Inspectorate to refund this sum to the applicant company will depend on whether or not the applicant company would have been successful in its objection. On balance, I believe that it would not have been. I reach this conclusion on the basis that the applicant company had lodged its objection notice out of time, without any explanation. Without a good reason for the delay, the Authority is unlikely to have exercised its discretion to allow the objection out of time.

[14] Furthermore, on the basis of the paper work before the Authority, it is unlikely that the Authority would have rescinded the Improvement Notice, although it may have varied it, given that the Labour Inspector agrees that it contains some errors in calculation.

[15] I note, as well, that the applicant company had to pay arrears of pay to employees directly as a result of actions taken by the Labour Inspector. Whilst these actions appear to have pre-dated the Improvement Notice, I am unable to conclude that the Improvement Notice had been issued wholly in error.

[16] On balance, therefore, I do not believe that it is appropriate for the Labour Inspectorate to be ordered to pay to the applicant company any contribution to the applicant's costs of lodging its objection to the Improvement Notice.

David Appleton
Member of the Employment Relations Authority